



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Portsmouth Professional Firefighters, Local 1313  
IAFF

Complainant

v.

Portsmouth Board of Fire Commissioners

Respondent

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Case No: F-0106-31

Decision No. 2007-043

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Portsmouth Professional Firefighters, Local 1313 IAFF (the "Union") filed an unfair labor practice complaint on February 22, 2007 alleging that the Portsmouth Board of Fire Commissioners (the "Fire Commissioners") committed an unfair labor practice in violation of RSA 273-A:5, I (e). According to the Union, it filed a grievance concerning changes to the "Slice of Life Program," a wellness program that is part of employee health insurance. In its grievance the Union claims the change constituted an improper unilateral change in conditions of employment. The matter is now proceeding to arbitration. The charge in this case is based upon the Union's allegation that after it filed for arbitration the Fire Commissioners issued a memo, which encourages employees to participate in the unilaterally changed benefit that is, in part, the subject of the arbitration demand.

As remedies, the Union requests that the PELRB: (1) Find that the City has violated RSA 273-A:5 I (e) as a result of direct dealing with employees represented by the Union; (2) Order the Fire Commission to cease and desist from such activity; (3) Order the Fire Commission to post the decision of the Board and a cease and desist order in places where the employees work; and (4) Grant such other relief as is just and equitable.

The Fire Commissioners filed its answer on March 6, 2007. The Fire Commissioners claim that the wellness program is separate from the health insurance benefit and acknowledges the authenticity of the memo about which the Union complains. The Fire Commissioners claims the complaint is procedurally deficient, that the PELRB lacks jurisdiction, and the matter should be dismissed.

Accordingly, the Fire Commissioners request that the PELRB: (1) Dismiss the Unfair Labor Practice Charge with prejudice; (2) Order the IAFF Local #1313 to reimburse the City for its fees, expenses, and lost time in responding to the Charge; and (3) Grant such other relief as may be appropriate under the circumstances.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB on March 28, 2007.

#### PARTICIPATING REPRESENTATIVES

For the Union: John S. Krupski, Esq.

For the Fire Commissioners: Thomas J. Flygare, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Fire Commissioners engaged in direct dealing in violation of RSA 273-A:5, I (e) when Dianna Fogarty, the Human Resources Director, issued a February 2, 2007 memo concerning a Personal Health Analysis and related matters at a time when the Union had filed for arbitration concerning alleged improper unilateral changes to the health insurance benefit which related, in part, to the subject matter of Ms. Fogarty's Memo?

#### WITNESSES

For the Union:

1. Diana Fogarty
2. William McQuillen
3. Michael Hughes, Chair, Board of Fire Commissioners

For the City:

1. Diana Fogarty
2. Wendy Parker
3. Blue Cross Representative

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

## EXHIBITS

For the Union:

1. Current CBA
2. Grievance Materials filed on or about 1/31/07
3. Letter dated 1/9/07
4. Proposal dated 1/12/07
5. Letter dated 2/2/07 to Rich E. Condon
6. Pleadings in this matter

For the City:

1. Insurance Documents

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

## LENGTH OF HEARING

The time set aside for this hearing will be three hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least ten days prior to the date of the evidentiary hearing.

## DECISION

1. It was evident at the pre-hearing conference that the parties are close to resolving this dispute by agreement. The parties agreed that they will know whether the matter is resolved by April 3, 2007. Accordingly, the parties shall notify the PELRB of any agreed upon resolution no later than April 4, 2007, in which event the matter shall be marked resolved on the docket, the hearing date cancelled, and the parties shall file agreed upon documentation concluding this matter via stipulation or other proper pleading on or before April 12, 2007.

2. In the absence of an agreed upon resolution, the parties' representatives shall meet, or otherwise confer, on or before April 6, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least two days prior to the date of the hearing.

2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or

counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

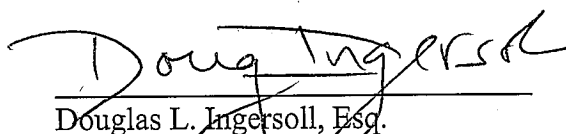
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than ten calendar days prior to the scheduled hearing date, and any responses thereto shall be filed no later than three calendar days before the scheduled hearing date.

4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

**April 12, 2007 @ 9:30 a.m.**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.  
March 28, 2007.

  
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Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:  
John S. Krupski, Esq.  
Thomas J. Flygare, Esq.